

# **STATE HOUSING APPEALS BOARD**

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## **Minutes of the November 8, 2004 Board Meeting**

The November 8, 2004 meeting of the State Housing Appeals Board (“SHAB” or “Board”) was called to order at 2:10 PM in the Council Chambers at Pawtucket City Hall, 137 Roosevelt Avenue, Pawtucket, Rhode Island by Judge Stephen P. Erickson, Chair. Board members in attendance Judge Stephen Erickson, Donald Goodrich, Thomas Hodge, Charles Maynard, Richard Godfrey, John O’Brien, Steve Ostiguy, and Dr. Isadore Ramos. Board member Frank Giorgio III was not present. Also present were Steven Richard, Esq., legal counsel to the Board, and Judy Jones, Katherine Maxwell, and Christine DaRocha, administrative staff to the Board. With eight members present, Judge Erickson declared a quorum.

Mr. Maynard moved and Mr. O’Brien seconded the motion to approve the minutes of the October 12, 2004 Board meeting. The motion was approved unanimously with Judge Stephen Erickson, Donald Goodrich, Thomas Hodge, Charles Maynard, Richard Godfrey, John

**O'Brien, Steve Ostiguy, and Dr. Isadore Ramos voting in the affirmative.**

**Judge Erickson welcomed Katherine Maxwell as the staff person at Rhode Island Housing assigned to provide administrative support to the State Housing Appeals Board.**

**The Board adopted and the Chair promulgated two decisions of the Board:**

**(a) Appeal No. 2004-01 Deer Brook Development Corporation vs. the Town of Exeter Zoning Board of Review**

**(b) Appeal No. 2004-19 East Bay Community Development Corporation vs. the Town of Barrington Zoning Board of Review**

**R.I.G.L. 45-53-5 states that the SHAB “shall render a written decision and order...within thirty (30) days after the termination of the hearing.” The Town of Barrington filed its appeal with the Supreme Court on November 1, 2004, within 20 days of the October 12, 2004 oral decision of the SHAB. The appeal was docketed by the Supreme Court, which presents the questions of whether SHAB still has jurisdiction and whether a written decision can be issued. Judge Erickson said that R.I.G.L. 45-53-5 requires the Board to issue a written decision, therefore, the Board will promulgate the decision. Mr. Grieco, attorney for the Barrington Zoning Board, said that the filing of the appeal to the Supreme Court before the issuance of the**

**written decision was not intended to divest the SHAB of its jurisdiction.**

### **Appeals from SHAB decisions to the Supreme Court**

**Currently, four SHAB decisions have been appealed to the Rhode Island Supreme Court:**

- Highland Hills/Cumberland (Town and abutters appealed the Zoning Board decision; the developer appealed SHAB decision.)**
- Housing Opportunities Corp/Johnston (Developer appealed.)**
- JCM, LLC/Cumberland (Zoning Board appealed.)**
- East Bay CDC/Barrington (Zoning Board appealed.)**

**Since the Supreme Court hears only appeals of final decisions, the JCM, LLC/ Cumberland appeal is of interest, because the SHAB's decision was to remand the case back to the Zoning Board for a further hearing.**

### **Substantial Completeness Reviews**

**Judge Erickson noted that Appeal No. 2004-11 Churchill Banks & Companies, LLC vs. the Town of Smithfield Zoning Board of Review has been continued to a later date.**

**The Board discussed how it will conduct the substantial review**

process. Mr. Richard said that he will not draft a full written decision for each appeal except in special circumstances. He will create a short form of an order in each case, and the transcripts will provide the background discussion.

Mr. Richard also discussed the appellate rights of the parties. If the SHAB remands the case back to the local board, that order cannot be appealed to the Supreme Court because it is not a final action. However, if the Board rules that an application is incomplete, the developer may appeal that final decision to the Supreme Court.

Judge Erickson noted that this is the same procedure used in other court proceedings.

Mr. Richard said that the new law requires a qualitative, not quantitative, analysis for judging substantial completeness. Some of the requirements are ministerial, for example, the sample deed. The completeness of the master plan, however, was a common incompleteness issue cited by the Towns. A second standard in the law for judging substantial completeness is whether the town acted as if the application was substantially complete. The Board may want to look at that standard first – the history of the application at the local level, amount of expert testimony, etc. Judge Erickson said that the Board could separate out those applications with sufficient vested rights that relied on the prior statute.

**Mr. Hodge asked whether the issue of the completeness of the master plan was decided by each individual community based on how it defined “master plan level.” Mr. Richard said that some communities do have additional standards. The Board can obtain copies of master plan standards from communities as needed.**

**Mr. Goodrich commented that developers submitted their comprehensive permit applications before the list for completeness appeared in the new law, but it appears that the legislation used the criteria SHAB requires for submitting an appeal. Mr. Hodge asked how the Board would respond to an application when the town said the master plan was not complete.**

**Judge Erickson said that situation was addressed in the new law by stating that the Board had to determine the “substantial completeness of substantially all” of the criteria. “Substantially complete” is a common legal standard. Although perfect compliance is impossible, there is some point at which the issue in question is not in compliance.**

**Mr. Richard pointed out that there was not a uniform process among towns to determine completeness of an application. Judge Erickson said that although the zoning or planning official might determine that the comprehensive permit application was not complete, only the Zoning Board had the right to make a completeness determination.**

**The Board began its review of the substantial completeness of the applications on its agenda. The transcript of the hearing is the record of the proceedings and available for public review upon request.**

**Appeal No. 2004-10 Smithfield Hills, LLC vs., the Town of Smithfield Zoning Board of Review**

**Representing the parties were Gregory Benik, Esq. for Smithfield Hill, LLC and Edmund Alves, Esq. for the Town of Smithfield Zoning Board of Review. The Town argued that the application is not substantially complete; counsel for the developer argued that the application is complete.**

**The Board recessed from 3:40 to 3:55 PM.**

**Appeal 2004-11 Church & Banks Companies, LLC vs. the Town of Smithfield Zoning Board of Review**

**This appeal is continued to a later date.**

**Appeal No. 2004-15 Armand Cortellesso aka Patriot Homes vs. the Town of Smithfield Zoning Board of Review**

**Representing the parties were David Iglioizzi, Esq. for Armand Cortellesso and Edmund Alves, Esq. for Town of Smithfield Zoning**

**Board of Review. The Town argued that the application is incomplete; counsel for the developer argued that the application is complete.**

**The Town, claiming that Cortellesso no longer has standing because the property was transferred to another entity, Hoxie Farms, LLC, raised an issue of jurisdiction. Judge Erickson said that SHAB would take the issue of jurisdiction under advisement.**

**After hearing the arguments on this appeal, Judge Erickson noted that the Town did not make a qualitative analysis of the missing information. When any of the criteria in a subcomponent was missing, the Zoning Board deemed the entire item to be incomplete. By taking this approach, the Town left SHAB to make the judgment about the materiality of the omission. Mr. Alves said that the Zoning Board considered all of the elements of the criteria to be important.**

**In response to a question from a Board member during the discussion of Appeal No. 2004-10 regarding the specificity of waivers requested on the notice to abutters, Mr. Alves said that he would forward to the Board the hearing notices for the Smithfield appeals.**

**Appeal No. 2004-16 Crown Properties, LLC vs. the Town of Smithfield  
Zoning Board  
of Review**

Representing the parties were David Iglioizzi, Esq. for Crown Properties, LLC and Edmund Alves, Esq. for Town of Smithfield Zoning Board of Review. The Town argued that the application is incomplete; counsel for the developer argued that the application is complete.

Judge Erickson asked Mr. Alves if the Zoning Board used the same analytical model as the previous appeal for determining substantial completeness of this application; Mr. Alves said that it did. Judge Erickson also asked if the Zoning Board assumed the application to be incomplete even as it held substantive hearings. Mr. Alves replied that application had five hearings and was the most developed of the appeals. Judge Erickson asked why five hearings were not sufficient to deem the application complete. Mr. Alves said that the applicant changed the plan to meet a Zoning Board member's concerns.

Mr. Richard noted that the Zoning Board was arguing that there is no a middle ground between "completeness" and "incompleteness."

**Appeal No. 2004-17 West Reservoirs, LLC vs. the Town of Smithfield Zoning Board of Review**

Representing the parties were Gregory Benin, Esq. for West Reservoir, LLC and Edmund Alves, Esq. for the Town of Smithfield Zoning Board of Review. The Town argued that the application is incomplete; counsel for the developer argued that the application is

**complete.**

**One disputed item is the amount of commercial space to be developed in relationship to the amount of housing, depending on whether only Phase One or both Phases are used in the calculation.**

**Mr. Maynard left the meeting at 4:40 PM.**

**The meeting adjourned at 4:55 PM.**

**Respectfully submitted.**

**Judge Stephen P. Erickson, Chair**